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**TENNESSEE WORKERS' COMPENSATION
LEGISLATIVE AND ADMINISTRATIVE CHANGES
2004-2005**

MAXIMUM/MINIMUM BENEFIT CHANGES

Temporary Benefits - The maximum weekly benefit rate for injuries occurring July 1, 2004 through June 30, 2005 is 105% of the state's average weekly wage, \$670.00.

Permanent Benefits - The maximum weekly benefit rate for injuries occurring July 1, 2004 through June 30, 2005 is 100% of the state's average weekly wage, \$638.00.

Minimum Weekly Benefit - The minimum weekly benefit rate for injuries occurring July 1, 2004 through June 30, 2005 for both temporary and permanent benefits is \$95.70.

APPROVAL OF ATTORNEY FEES

For the year beginning July 1, 2004 and ending June 30, 2005, the adjusted threshold amount for attorney fees subject to review/approval by the Commissioner of Labor and Workforce Development is \$13,459.90.

LEGISLATIVE CHANGES

This overview is general. For a complete and detailed review of this information please read the legislation in its entirety by going to www.legislature.state.tn.us. The legislation will be listed as SB3424/HB3531.

MEDICAL FEE SCHEDULE

The workers' compensation reform legislation provides for a medical fee schedule to apply to all manner of treatment of a work related injury to deliver quality medical care while controlling prices and system costs. The fee schedule is to be effective July 1, 2005. The fee schedule will be developed through consultation with the Medical Care and Cost Containment Committee and the Workers' Compensation Advisory Council and other experts in the medical field. Before adoption the schedule will be reviewed by the House Consumer and Employee Affairs Committee and the Senate Commerce, Labor and Agriculture Committee.

FUTURE MEDICAL BENEFITS

The bill prohibits an employee from selling his/her right to future medical benefits until three years after the date of settlement approval or trial order on injuries to schedule members with a value of 200 weeks or more and to body as whole

injuries. The right to future medical benefits for permanent total disability can never be closed. This provision is effective for injuries on or after July 1, 2004. Allows closure of future medical benefits on any schedule member injury for which the injured worker is eligible to receive benefits for a period of less than 200 weeks.

The legislation provides for disputed and controverted claims to be settled as long as the total amount paid is no more than 50 times the minimum weekly benefit rate as of date of the claimed injury. This provision is effective for injuries on or after July 1, 2004. Settlements made pursuant to this section have no right to future medical benefits.

PANEL OF PHYSICIANS

The bill requires the Department of Labor and Workforce Development establish a form for employers to use to provide a panel of physicians. The form requires the employee to document his/her selection of the attending physician by signature and date. The employer must maintain the original form and provide a copy to the employee. The employer is required to provide a copy to the Workers' Compensation Division upon request. This provision is effective for injuries on or after July 1, 2004.

PENALTY FOR UNTIMELY PAYMENT OF TEMPORARY DISABILITY BENEFITS

The legislation requires the Department of Labor and Workforce Development to assess a penalty against an employer, pool or trust, or an employer's insurer who fails to make a payment or who makes an untimely payment of temporary disability benefits to which the injured worker is entitled. The penalty will be assessed when temporary benefits are unpaid or untimely paid 20 or more days after the employer had knowledge of the injury. The penalty amount is 25% of untimely paid or unpaid temporary disability benefits and is made payable to the injured employee. This provision is effective for injuries on or after July 1, 2004.

PERMANENT IMPAIRMENT CAP OF MULTIPLIER FOR IMPAIRMENTS WORTH 200 WEEKS OR MORE

The bill establishes a cap of 1.5 times the permanent impairment rating for claims in which the injured worker returns to work with same employer at same or greater wage. This cap applies to all body as a whole impairments and scheduled member impairments worth 200 weeks or greater. This provision is effective for injuries on or after July 1, 2004.

RECONSIDERATION RIGHTS

Provides for reconsideration of settlements for body as a whole injuries capped at 1.5 if injured employee loses his/her job within 400 weeks of the date of return to work. The reconsideration of settlements for schedule member injuries capped at 1.5 is for the number of weeks the schedule member involved is worth and begins with the day he/she returns to work. The bill provides two exceptions that prohibit an employee from filing for reconsideration: 1. Voluntary resignation or retirement unrelated to the work-related disability. 2. Employee misconduct. The bill retains the six times cap on non-return to work permanent partial

disability settlements on body as a whole injuries and also applies this six times cap on non return to work permanent partial disability settlements for scheduled members worth 200 weeks or more. Clarifies that employees are not permitted to waive or forfeit and the parties are not permitted to compromise and settle, the employee's rights to reconsideration. These provisions are effective for injuries which occur on or after July 1, 2004.

IMPAIRMENT RATING GUIDELINES

The legislation requires physicians to use the applicable edition of the AMA Guides to Permanent Impairment. In cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medial community is allowed. The division Administrator determines which edition is applicable. The full title of the most recent edition and the date it became effective will be maintained on the website of the Tennessee Workers' Compensation Division (www.state.tn.us/labor-wfd/wcomp.html). This provision is effective for injuries which occur on or after July 1, 2004.

BENEFIT REVIEW CONFERENCE PROCESS

The bill prohibits filing a case in court until after the Benefit Review Conference process has been exhausted. If a date for a conference is not agreed upon within 45 days of request or date of maximum medical improvement, the Workers' Compensation Division will set the date of the Benefit Review Conference. If the Division fails to conduct the Benefit Review Conference within 60 days, the parties may elect, at their own expense, to hire a private Rule 31 mediator to conduct a mediation conference. Any agreement reached through private mediation must be approved by either the department or a court. There is an exception for cases in which there is no dispute and parties reach a settlement without the need for a Benefit Review Conference. In these settlements the parties can proceed to court or to the division for approval. These provisions are effective for injuries which occur on or after January 1, 2005.

AUTHORITY TO CONTINUE, WAIVE OR DISMISS A BENEFIT REVIEW CONFERENCE

The legislation gives authority to the Workers' Compensation Specialist, within their sole discretion, to continue, waive or dismiss a Benefit Review Conference. This provision is effective for injuries which occur on or after January 1, 2005.

ELIMINATION OF CRIMINAL COURT JURISDICTION TO HEAR WORKERS' COMPENSATION CASES

The bill eliminates criminal court jurisdiction to hear workers' compensation cases. This provision is effective July 1, 2004.

TEMPORARY AND PERMANENT DISABILITY BENEFIT CAPS

The legislation raises the cap on weekly temporary disability benefits to 105% of the state's average weekly wage for injuries which occur on July 1, 2004 through June 30, 2005. It raises cap on compensation benefits in temporary cases only to 110% of the state's average weekly wage for injuries which occur on July 1,

2005. The cap on permanent partial benefits remains at 100% of the state's average weekly wage.

INDEPENDENT MEDICAL EXAMINATION REGISTRY

The bill establishes an Independent Medical Examination Registry to settle disputes as to an injured worker's impairment rating. The opinion of the physician selected through the Registry process shall be presumed to be accurate and can only be rebutted by clear and convincing evidence. Independent medical examinations are paid for by the employer or insurer. No physician may serve as an independent medical examiner in a case where that physician was listed on the panel provided to the employee to choose his/her treating physician. This provision is effective for injuries which occur on or after July 1, 2005.

SECOND INJURY FUND

Limits Second Injury Fund exposure to permanent total cases only and applies to injuries which occur on or after July 1, 2005.

CASE MANAGEMENT

Case Management is no longer mandatory and if utilized it is at the employer's expense and the employee must cooperate. This provision is effective July 1, 2004.

WORKERS' COMPENSATION ADVISORY COUNCIL REVIEW REQUIREMENTS

The bill requires the Workers' Compensation Advisory Council to review restrictions on employee's choice of treating physician, review definition of "injury", and review replacing present workers' compensation system with an administrative commission or review board. The Council will also study occupational health and safety in Tennessee's workplaces. The bill requires the Council to include in the annual report significant workers' compensation court decisions and a breakdown of awards by judicial districts. Standing committees of the General Assembly may refer workers' compensation bills to the Council for comment.

JUDICIAL TRAINING

This legislation requires judicial training on workers' compensation laws, requirements, and procedures and the use of the AMA Guides to be provided by the Administrative Office of the Courts effective July 1, 2004.

MEDICAL CARE AND COST CONTAINMENT COMMITTEE

The Medical Care and Cost Containment Committee's composition will increase from 8 to 14 members. New members consist of 1 additional member from the Tennessee AFL-CIO, 2 additional members from the Tennessee Hospital Association, 1 additional member from the Tennessee Chamber of Commerce and Industry, 1 new member from the Tennessee Pharmacists Association, and 1 new member from the health insurance industry. This provision is effective July 1, 2004.

DEPARTMENT OF COMMERCE AND INSURANCE – SELF INSURED EMPLOYER BONDS AND FINANCIAL STATEMENTS

The minimum bond amount required by the Department of Commerce and Insurance from a single self-insured employer is \$500,000.00. This section of the bill sets forth certain requirements for deposits of negotiable securities, certificates of deposit, letters of credit and bonds filed by a self-insurance with the Department of Commerce and Insurance. Financial statements required to be filed biennially with the Department of Commerce and Insurance must be actuarially certified. This provision is effective January 1, 2005.

The Department of Commerce and Insurance may assess a civil penalty of \$100 per day against a single self-insured employer for each day that it fails to provide its financial statement. The bill provides that a single self-insured employer must have a certificate of authority issued by the Department of Commerce and Insurance before it may transact business as a self-insurer. The Commissioner of Commerce and Insurance has the authority to conduct examinations and investigations of single self-insured employers necessary for the protection of the public. The Commissioner of Commerce and Insurance is also authorized to examine the financial condition of all employers who are self-insured or members of a self-insured pool or trust. These provisions are effective January 1, 2005.

DEPARTMENT OF COMMERCE AND INSURANCE – UNFAIR COMPETITION AND DECEPTIVE ACTS

The bill expands the power of the Department of Commerce and Insurance to regulate “unfair competition and deceptive acts” to include self-insured employers or members of a self-insured pool or trust. This provision is effective July 1, 2004.

DEPARTMENT OF COMMERCE AND INSURANCE – UNTIMELY PAYMENT OF WORKERS COMPENSATION BENEFITS IS UNFAIR CLAIM SETTLEMENT PRACTICE

The bill makes the general practice of failing to make timely payment of workers’ compensation benefits an unfair claim settlement practice subject to the Department of Commerce and Insurance’s enforcement powers. This provision is effective July 1, 2004.